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2018

Recognition and Implementation of Indigenous Rights Framework: Engagement guide

"Our efforts to build a better relationship with Indigenous peoples in Canada are not only about righting historical wrongs. They are about listening and learning and working together. They are about concrete actions for the future."

Prime Minister Justin Trudeau

Evergreen - April 26, 2018 Edition

Canada

Note to reader: This document may be updated throughout the engagement to respond to what we are hearing.

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Purpose

On February 14, 2018, Prime Minister Justin Trudeau delivered a statement in the House of Commons on the recognition and implementation of Indigenous rights. The statement confirmed the Government of Canada's shift to our relationship with Indigenous peoples being based on recognition.

In such a relationship we do not start from a place of denial, but from a place where we recognize that Indigenous peoples have inherent, treaty, and constitutionally protected rights, that these rights are affirmed by the *United Nations Declaration on the Rights Indigenous Peoples*, and are collaboratively recognized and implemented in partnership.

As Royal Commission on Aboriginal Peoples determined, recognition is essential to rebuilding strong, self-determining Indigenous nations with practicing and thriving cultures and as full participants in society. More specifically, as the Senate Standing Committee on Aboriginal Peoples report on the Royal Commission on Aboriginal Peoples indicated, recognition refers to the federal government affirming that Indigenous peoples have inherent and constitutionally protected rights, including rights of self-determination and self-government.

The results of such a shift could be transformative. Through self-determination, Indigenous peoples will lead the process of re-building their nations and governments, and achieving greater sustainability and prosperity over their lands. Through new legislation and policy that meets the standard of recognition of rights conflict will be reduced, collaboration increased, and formation of new agreements and partnerships accelerated.

The Government of Canada is committed to renewing the relationship with First Nations, Inuit and Métis peoples based on the recognition of rights, respect, cooperation and partnership. To live up to this commitment, the Government of Canada is undertaking major reforms to its laws and policies to ensure the constitutional commitments made to Indigenous peoples are respected. The recognition and implementation of Indigenous rights is central to Canada's relationship with First Nations, Inuit and Métis peoples and to advance the vital work of reconciliation. We also know Indigenous communities that have control over the decisions affecting their communities have better socio-economic outcomes.

As part of the ongoing journey of reconciliation, the Government of Canada has launched a national engagement to help develop a Recognition and Implementation of Indigenous Rights Framework.

What Does a Recognition of Rights Approach Mean?

All Canadians have rights and freedoms. *The Constitution Act, 1982,* including the Charter of Rights and Freedoms, outlines these rights. Indigenous rights are also recognized and affirmed in section 35 of the *Constitution Act, 1982*. These refer to the collective rights held by Indigenous peoples under our Constitution.

First Nations, Inuit and Métis peoples are descendants of the first people who lived in what is now known as Canada. They have unique rights that are recognized and protected by the Constitution, but laws and policies are needed to support the exercise of those rights. The Government of Canada is working with First Nations, Inuit and Métis peoples to create the federal laws and policies needed to fully and clearly put those rights into practice.

The goal is to chart a new way forward for the Government of Canada to work with First Nations, Inuit and Métis peoples, and to end decades of mistrust, poverty, broken promises and injustices.

Progress to Date

The Government of Canada is moving forward on two fronts to meet its commitment to a new relationship with Indigenous peoples.

The first track involves addressing the immediate and pressing day-to-day social, economic and cultural needs of Indigenous peoples and communities regardless of where an Indigenous people may be in terms of its own internal work of self-determination and rebuilding. For example:

- Budget 2018 renews the commitment to building a new relationship; it builds on the historic investment of $11.8 billion in the previous two budgets, investing in priority areas identified by Indigenous partners;
- 135 projects are underway to build and refurbish schools;
- 6,400 home are being built or renovated;
- 40 long-term drinking water advisories have been eliminated as of January 23, 2018; and
- To respond to the particular injustices and circumstances facing Indigenous women and girls, Canada established the National Inquiry into Missing and Murdered Indigenous Women and Girls.

The second track involves continuing to establish and implement the new foundation for the Indigenous-Crown relationship in which Indigenous peoples and their governments are in charge of their own futures and making their own decisions about their own affairs. The Government of Canada has taken initial steps to prepare for the joint work of empowering Indigenous nations and transforming Canada's laws, policies, and operational practices.

More specifically, we:

- Endorsed the *United Nations Declaration on the Rights of Indigenous Peoples*, without qualification, and committing to its full implementation, including support for Private Member's Bill C-262;

- Created the Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples;

- Adopted and publically released *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*; a path forward based on the recognition of rights, which is aligned with a "full box" view of section 35 of the *Constitution Act, 1982* and builds on a human-rights-based approach encouraged by the *United Nations Declaration on the Rights of Indigenous Peoples*;

- Established new Recognition of Indigenous Rights and Self-Determination tables where the government and Indigenous peoples work in partnership on the priorities identified by Indigenous partners;

- Committed to establishing two new departments – Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs – to be better partners in new, recognition-based, nation-to-nation, government-to-government, and Inuit-Crown relations;

- Created three permanent bilateral mechanisms; distinctions-based policy development forums with the Assembly of First Nations, the Inuit Tapiriit Kanatami, and the Métis Nation to work in new ways with self-governing nations and modern treaty holders;

- Announced significant reforms to impact assessment processes, including how Indigenous rights are considered in processes and the roles of Indigenous governments;

- Taking initial steps to establish new fiscal relations with Indigenous governments, including through a moratorium on the own-source revenue policy so that self-governing nations can keep all the funds that they generate through economic development; exploring new approaches to Indigenous health and education jurisdiction;

- Implementing a shift in the way that Canada litigates cases involving Aboriginal rights and title; this includes making the decision to not appeal or seek judicial review, acknowledging Canada's responsibility to redress past wrongs; more assertively seeking to settle outstanding litigation;

- Co-developing new Indigenous Language legislation with First Nations, Inuit, and the Metis Nation;

- Concluded significant education agreements, such as the Anishnabek Nation Education Agreement, which recognizes Anishnabek control over education for 23 participating First Nations and creates the Anishnabek Education system, as well as the opening of the Manitoba First Nations School System; and,

- Announced a new Health Accord that will include specific Indigenous components.

These actions and others have been vitally important in helping to reset the relationship. While progress has been made, we acknowledge that substantially more must be done.

Recognition and Implementation of Indigenous Rights: A Framework

A recognition and implementation of Indigenous rights framework will ensure that the Government of Canada respects constitutionally-protected Indigenous rights and provides policies and mechanisms for Indigenous peoples to exercise their rights. The framework will support Indigenous peoples' treaty rights and their inherent rights, as recognized in section 35 of the *Constitution Act, 1982* while also meeting the objectives outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

Part of this work means that new federal laws, policies and operational practices will be developed to support the rebuilding of Indigenous nations and governments, and advance Indigenous self-determination, including the inherent right of self-government.

Recognizing and implementing Indigenous rights is essential to achieve a strong, more prosperous and economically inclusive Canada. Prosperity for Indigenous peoples means prosperity for all of Canada.

Building on What We Have Heard

This work builds on decades of tireless advocacy by Indigenous leaders and communities, as well as several reports and studies, including the Royal Commission on Aboriginal Peoples, which have all called for a shift in the way the Government of Canada recognizes and implements Indigenous rights.

Indigenous partners have been instrumental in advancing the conversation around the recognition and implementation of rights through the negotiation of modern treaties, self-government agreements, and more recently through Recognition of Indigenous Rights and Self-Determination discussions. They have helped contribute to this shift in the Government of Canada's approach.

Focus of Engagement

Through the engagement process with First Nations, Inuit and Métis peoples, as well other partners and key stakeholders, Canada expects to formalize the recognition and implementation of Indigenous rights through new legislation and policies.

While specific components of this framework will be based on the results of this engagement, legislative and policy elements of the framework may include:

- legislation to formalize the standard of recognition of Indigenous rights as the basis for all government relations with Indigenous peoples
- a new policy that reflects the unique needs of First Nations, Inuit and Métis peoples to replace the current Comprehensive Land Claims Policy and the Inherent Right to Self-Government Policy
- reforming government policies and practices to support the implementation of historic and modern treaties, as well as self-government agreements
- mechanisms to support the rebuilding of Indigenous nations and governments, and advance Indigenous self-determination and the inherent right of self-government
- creating new dispute resolution approaches to address rights related issues, including overlapping territories and treaty implementation, that move us from conflict to collaboration
- establish enforcement mechanisms to monitor and review progress in the implementation of the inherent commitments within the Framework, including the implementation of rights, including historic and modern treaties; strengthening a culture of federal government accountability
- legislation establishing the two new departments that will replace Indigenous and Northern Affairs Canada with a mandate that better serves the distinct needs of First Nations, Inuit and Métis peoples

Knowledge to Build on

- Report on the Royal Commission on Aboriginal Peoples, 1996
- The Lornie Report on Acceleration of BC Common Table Treaty Negotiations, 2011
- Forging Partnerships, Building Relationships: Aboriginal Canadians and Energy Development, Douglas Eyford, 2013 PDF Version (984 Kb, 58 pages)
- The work of the Senior Oversight Committee on Comprehensive Claims, 2014
- A New Direction: Advancing Aboriginal and Treaty Rights, Douglas Eyford, 2015
- Statement of Principles on the Federal Approach to Modern Treaty Implementation
- A Matter of National and Constitutional Import: Report of the Minister's Special Representative on Reconciliation with the Métis: Section 35 Métis Rights and the Manitoba Metis Federation Decision, Thomas Isaac, 2016
- Truth and Reconciliation Commission Calls to Action, 2015 PDF Version (293 Kb, 20 pages)
- Multilateral Engagement Process to Improve and Expedite Treaty Negotiations in British Columbia, 2016
- The work of the Working Group on the Review of Laws and Policies Related to Indigenous Peoples
- Principles Respecting the Government's Relationship with Indigenous Peoples
- The work of the Office of the Treaty Commissioner in Saskatchewan and the Treaty Relations Commission of Manitoba
- Collaborative Fiscal Policy Development Process with Self-Governing Groups
- The work of the Permanent Bilateral Mechanisms
- More than 50 Recognition of Indigenous Rights and Self-Determination discussion tables

Working Together to Build a New Relationship

For too long, Indigenous peoples in Canada have had to prove their rights existed and fight to have them recognized through costly court challenges. To truly renew the relationship between Indigenous peoples and Canada, the Government of Canada needs a comprehensive and far-reaching approach, which supports and empowers Indigenous communities as they shape their own future and find their own way forward.

The recognition of rights of Indigenous Peoples will not be a one-size-fits-all approach. It must be done in partnership with Indigenous peoples. Some aspects of shifting to recognition will require participation of provinces and territories, while others may be taken by the federal government alone, pursuant to its constitutional responsibilities and authorities. It will also be important to build upon actions already taken by provinces and territories to advance reconciliation.

Any approaches that may be taken must align with our commitments to the *United Nations Declaration on the Rights of Indigenous Peoples* and section 35 of the *Constitution Act, 1982*, and be informed by the Truth and Reconciliation Commission's Calls to Action, as well as the *Principles Respecting the Government's Relationship with Indigenous peoples*.

Part of this work means new federal laws, policies, and operational practices will be developed to support the rebuilding of Indigenous nations and governments, and advance Indigenous self-determination, including the inherent right of self-government.

Led by the Minister of Crown-Indigenous Relations and Northern Affairs, the Government of Canada is engaging First Nations, Inuit and Métis peoples, as well as other partners and key stakeholders. Engagement will centre on the legislative and policy changes necessary to reform government policies and practices, to ensure the constitutional commitments made to Indigenous peoples are respected.

The Recognition and Implementation of Indigenous Rights Framework will be introduced in 2018 and will form the basis for all relations between Indigenous peoples and the Government of Canada moving forward.

"Reconciliation calls upon us all to confront our past and commit to charting a brighter more inclusive future. We must acknowledge that centuries of colonial practices have denied the inherent rights of Indigenous peoples. At last, we must work together with Indigenous peoples to design an approach in which inherent and treaty rights can be recognized and Indigenous peoples can be supported in implementing those rights. As we move towards the next 150 years of Canada, I envision a country that is more inclusive of First Nations, Inuit and the Métis peoples. Making this shift is fundamental to the growth and prosperity of Canada."

The Honourable Carolyn Bennett, M.D., P.C., M.P.
Minister of Crown-Indigenous Relations and Northern Affairs

Tell us What You Think

The Government of Canada believes that together with our Indigenous partners, we can shape a common vision for our shared future – a future in which self-determining Indigenous peoples are self-governing and care for their own citizens based on their laws and jurisdictions, leading to significantly improved quality of life for every Indigenous child, youth, and adult, and thriving Indigenous cultures.

What is discussed in this engagement guide is not the only path reconciliation. The work of transforming the status quo and renewing the relationship is a project that will ultimately span multiple generations. The current status is the culmination of at least 150 years of various laws, policies and actions. Fully renewing the relationship is not a simple "from-to" exercise. But we must start with clear and bold steps – and laying a new foundation of recognition in law and policy is a fundamental starting point.

The Government of Canada is undertaking a major reform of its laws and policies to ensure the constitutional commitments made to Indigenous peoples are respected. To achieve this, the government is launching an engagement process with First Nations, Inuit and Métis peoples, as well as other partners and key stakeholders, to develop a Recognition and Implementation of Indigenous Rights Framework. Below you will find questions to help guide our conversation. This engagement is an opportunity for us all to advance this work together, please answer any of the questions that connect with you. We look forward to embarking on this historic journey and hearing your perspectives on how we can advance true and meaningful change.

Together, we need to explore practical ways to support Indigenous peoples to give effect to their jurisdictions and laws, in order to determine their own political, economic and social structures. Consider the discussion questions below and email your answers to droitsautochtones-indigenousrights@canada.ca.

Policy reforms and new laws

1. The *Constitution Act, 1982* outlines the rights and freedoms of all Canadians. Canada also has laws, policies, and practices through which these rights are recognized and implemented. What are the legislative and policy changes that are necessary to reform government policies and practices in order to ensure Indigenous rights are fully implemented?

2. What are priority matters that should be addressed in a new "Recognition and Implementation of Indigenous Rights" Act?

3. What are matters that should not be addressed in a new "Recognition and Implementation of Indigenous Rights" Act?

4. How should a new "Recognition and Implementation of Indigenous Rights" Act, respect and reflect the distinctions between First Nations, Inuit and Métis peoples?

5. How should the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* be operationalized or reflected in the new legislation and policies?

6. How can the Government of Canada improve the implementation of historic treaties and resolve historical grievances?

7. How can the Government of Canada improve the implementation of modern treaties and self-government agreements?

8. What distinctions-based approaches could replace the current Comprehensive Land Claims Policy and the Inherent Right to Self-Government Policy?

9. How would you define the role provinces and territories have in recognizing and implementing the inherent and treaty rights of First Nations, Inuit and Métis peoples?

Nation Building

The Royal Commission on Aboriginal Peoples (RCAP) defined an Indigenous nation as a sizeable body of Indigenous people with a shared sense of national identity that constitutes the predominant population in a certain territory or collection of territories. The report estimated the existence of 60 to 80 nations.

10. How would you define an Indigenous nation? If your definition differs from that from RCAP, how so?

11. Who should determine who is an Indigenous nation and who is not?

12. When it comes to First Nations, do modern treaty groups, traditional governments or retribalization factor into defining nations?

13. What role does the re-empowerment of women play in defining and rebuilding Indigenous nations?

14. How can the Government of Canada support nation (re)building and nation recognition?

15. Is there a need for new Indigenous controlled and run institutions to support the rebuilding of Indigenous nations and governments, and the exercise of jurisdiction by Indigenous governments? What role might such an institution play?

Urban Indigenous peoples

16. How can we recognize and implement the rights of Indigenous peoples in urban areas?

Dispute Resolution

17. What additional dispute resolution mechanisms should be increasingly used and supported to more effectively resolve matters between the federal government and Indigenous peoples, or between Indigenous governments and nations themselves?

Accountability

18. What new tools and mechanisms should be created to ensure accountability on the part of the federal government in the recognition and implementation of Indigenous rights?

Departmental Transformation: Indigenous Services Canada

19. How can Indigenous Services Canada ensure it addresses the distinct needs of First Nations, Inuit and Métis peoples?

20. What services should be included in Indigenous Services Canada?

21. How can Indigenous Services Canada help to address the socio-economic gaps affecting Indigenous peoples?

22. How can Indigenous Services Canada help First Nations, Inuit and Métis peoples build the capacity to run their own programs and services?

23. What changes can be made to ensure that Indigenous Services Canada works better to support Indigenous peoples in service delivery?

Departmental transformation: Crown-Indigenous Relations and Northern Affairs Canada

24. What are the obstacles to exercising self-determination or self-government?

25. How can Crown-Indigenous Relations and Northern Affairs Canada be structured and operate to best support Indigenous nations exercising self-determination and self-government? What could help you better exercise your community's self-determination? What tools or policies could support your community?

26. For those currently participating in Recognition of Indigenous Rights and Self-Determination discussions, modern treaty or self-government negotiations, what is your community seeking to achieve? How can we ensure youth and community members are engaged in the process?

27. Do you see a role for institutions to support and advance the exercise of self-determination and self-government? How can Crown-Indigenous Relations and Northern Affairs Canada facilitate the establishment of institutions and work in partnership with them to advance self-determination and self-government (for example, potential Indigenous-led institutions, arms length organizations, oversight institutions)?

28. What role could an institution play to support dispute resolution? What type of disputes (for example, historical grievances, disputes regarding the recognition and implementation of rights) could it work to resolve and between whom (Crown-Indigenous, Indigenous-Indigenous)?

29. Where do you see the two new departments needing to operate together? Where do you see their work overlapping?

Please use the space below for any additional comments and feedback:

Provide Us With Your Feedback

Additional information can be found at www.canada.ca/indigenous-rights. Please provide us with your input directly. Write to Minister Bennett at droitsautochtones-indigenousrights@canada.ca or:

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